Supreme Court, U. S.
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In The

Supreme Court of the United States

October Term, 1972

No. 73-207

EUGENE A. WAHL and VIBRA SCREW, INC.,

Petitioners,

vs.

VIBRANETICS, INC.,

Respondent.

SUPPLEMENTAL BRIEF FOR PETITIONERS

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In The

Supreme Court of the United States

October Term, 1972

No: A-1153

EUGENE A. WAHL and
VIBRA SCREW, INC.

Petitioners,

vs.

VIBRANETICS, INC.,

Respondent.

SUPPLEMENTAL BRIEF FOR PETITIONERS

Respondent's brief in opposition to the petition makes no effort to meet petitioners' demonstration that the decision below is in conflict with the cautionary mandates of *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 332-34, 350, and that it raises important questions of federal patent law which should be settled by this Court.

By making initial decisions of patent invalidity potentially terminal, the *Blonder-Tongue* case had magnified the need for full and considered appellate scrutiny of district court judgments of invalidity, in contrast to the unwarranted total reliance on the district

court's findings of fact in which the Seventh Circuit in this case indulged (Pet. pp.15-19). In granting summary judgment without requiring answers to petitioners' interrogatories, or according petitioner any other evidentiary avenue to demonstrate the inapplicability of collateral estoppel, the Kentucky district court nullified the directives of the *Blonder-Tongue* case.

After our petition was filed, we learned that the Court of Appeals for the Fifth Circuit had affirmed the decision of the Georgia District Court in the *Blumcraft* case (Pet. p.13 note 5). *Blumcraft of Pittsburgh v. Kawneer Company*, F.2d (C.A. 5th, Case No. 72-3428, July 20, 1973). The decision takes a broad interpretation of *Blonder-Tongue* and explicitly approves the application against a patentee of collateral estoppel after a single holding of invalidity, even though the invalidity ruling has been preceded by multiple decisions holding the patent valid. To be sure, that is not the question presented by this petition, but the sweep of the ruling underlines our basic contention (Pet. p.12) that some lower federal courts are giving short shrift to the requirements so carefully prescribed in the *Blonder-Tongue* case, and that certiorari should be granted here, where even the opportunity to present evidence against estoppel has been denied, in order to forestall a general trend in this dangerous and, at bottom, unconstitutional direction.

Respectfully submitted,

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